

UNITED STATES DISTRICT COURT

Northern District of California

San Francisco Division

ANTHONY SMITH,

Plaintiff,

v.

PUBLIC DEFENDER'S OFFICE OF  
ALAMEDA COUNTY,

Defendant.

No. 15-cv-695 LB

**ORDER OF DISMISSAL**

[Re: ECF Nos. 20-24]

**INTRODUCTION**

Anthony Smith, an inmate currently at the Salinas Valley State Prison, has filed this *pro se* prisoner's civil rights action under 42 U.S.C. § 1983. The court reviewed his complaint and dismissed it with leave to amend. The court extended the deadline for an amended complaint several times, so that Mr. Smith eventually had more than three months to prepare his amended complaint. Mr. Smith has filed an amended complaint (ECF No. 20) and several other documents (ECF Nos. 21-24) which the court construes to be amendments to the amended complaint. His amended complaint as amended is now before the court for review under 28 U.S.C. § 1915A. This order dismisses the action without prejudice to Mr. Smith's filing a new action for a writ of habeas corpus and without prejudice to Mr. Smith's filing a new civil rights action if he ever has his convictions set aside.

**STATEMENT**

Before turning to the allegations of the amended complaint as amended, it is helpful to describe three convictions Mr. Smith as suffered that form the basis for his claims. Mr. Smith was convicted in Alameda County Superior Court in 2002 of vehicle theft; on March 15, 2002, he received a sentence of one year and four months for that offense. (ECF No. 20 at 4.) Mr. Smith was convicted in Alameda County Superior Court in 2007 of first degree residential burglary, and was found to have suffered five prior serious felony convictions and three prior prison terms; he was sentenced to a total term of 38 years to life in prison. (ECF No. 21 at 4.) A state court docket sheet shows that Mr. Smith appealed from that conviction, *see People v. Smith*, Cal. Ct. App. No. A119777; his conviction was affirmed on March 16, 2009, and the California Supreme Court denied review on May 20, 2009. In 2008, Mr. Smith faced additional criminal charges, including robbery with prior convictions, in a separate case in Alameda County Superior Court. (*See* ECF No. 24 at 5.) A state court docket sheet shows that Mr. Smith appealed from a conviction in that case, *see People v. Smith*, Cal. Ct. App. No. A127404; his conviction was affirmed on August 24, 2011, with a limited remand for a sentence correction, and the California Supreme Court denied review on November 16, 2011. (The appellate history for the burglary and robbery convictions was obtained by using the docket numbers provided on the paperwork from Mr. Smith and searching the docket sheets available at [www.appellatecases.courtinfo.ca.gov](http://www.appellatecases.courtinfo.ca.gov).)

Mr. Smith's filings very difficult to understand, but it is clear that he is seeking damages and possibly other relief based on problems that occurred during several of his criminal cases. In his amended complaint, Mr. Smith alleged that the judge and prosecutor violated his rights in the criminal case that led to his 2002 conviction for vehicle theft. (ECF No. 20.) He challenges the sufficiency of the evidence to support the conviction in that case, and alleges that the prosecutor and judge did not properly advise him regarding the plea. Mr. Smith alleged that the vehicle theft conviction "is what eligible-izes the 3 strikes law, and without it, I am not suited for the 3 strikes." (*Id.* at 2 (errors in source).)

Mr. Smith also filed several other documents that the court construes to be amendments to his amended complaint. In a document entitled "quick minute," Mr. Smith alleged errors in his 2007

1 burglary case, i.e., that there was a double jeopardy violation and an unlawful search and seizure.  
2 (ECF No. 21.) In a document entitled “judicial notice,” Mr. Smith appeared to challenge the  
3 sufficiency of the evidence to support the 2007 burglary conviction and his exercise of his *Faretta*  
4 rights. (ECF No. 22.) He requested damages and injunctive relief from his confinement. (*Id.* at 5,  
5 6.) He also submitted a copy of his “petition for writ of habeas corpus and mandate” filed in  
6 Alameda County Superior Court in 2009 in which he alleged errors in his state court prosecution for  
7 burglary. (ECF No. 23.) Mr. Smith also filed a document entitled both “update and addressance”  
8 and “continuance of amended complaint and request for extension.” (ECF No. 24 (errors in  
9 source).) In that document, he complained that court and jail limitations were impeding his exercise  
10 of his *Faretta* rights in the 2008 robbery case in Alameda County Superior Court. (ECF No. 24 at 5-  
11 8.) In that filing, Mr. Smith also sought an extension of time to file further claims pertaining to his  
12 criminal cases.

### 13 ANALYSIS

14 A federal court must engage in a preliminary screening of any case in which a prisoner seeks  
15 redress from a governmental entity or officer or employee of a governmental entity. *See* 28 U.S.C.  
16 § 1915A(a). In its review the court must identify any cognizable claims, and dismiss any claims  
17 which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek  
18 monetary relief from a defendant who is immune from such relief. *See id.* at § 1915A(b). *Pro se*  
19 complaints must be liberally construed. *See Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010).

20 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two elements: (1) that a right  
21 secured by the Constitution or laws of the United States was violated, and (2) that the violation was  
22 committed by a person acting under the color of state law. *See West v. Atkins*, 487 U.S. 42, 48  
23 (1988).

24 The amended complaint, as amended, fails to state a claim upon which relief may be granted.  
25 Mr. Smith alleges claims for damages for constitutional violations that occurred in his prosecutions  
26 for vehicle theft, burglary and robbery. The *Heck* rule precludes Mr. Smith from suing for damages  
27 or equitable relief at this time for the alleged constitutional violations in connection with his  
28 criminal trials. *Heck v. Humphrey*, 512 U.S. 477 (1994), held that a plaintiff cannot bring a civil

1 rights action for damages for a wrongful conviction or imprisonment, or for other harm caused by  
2 actions whose unlawfulness would render a conviction or sentence invalid, unless that conviction or  
3 sentence already has been determined to be wrongful. *See id.* at 486-87. Although the *Heck* rule  
4 initially was announced with regard to an action for damages, the Supreme Court has since clarified  
5 that *Heck* applies when equitable relief is sought. *See Wilkinson v. Dotson*, 544 U.S. 74, 81 (2005).  
6 A conviction or sentence may be determined to be wrongful by, for example, being reversed on  
7 appeal or being set aside when a state or federal court issues a writ of habeas corpus. *See Heck*, 512  
8 U.S. at 486-87. The *Heck* rule also prevents a person from bringing an action that -- even if it does  
9 not directly challenge the conviction or sentence -- would imply that the conviction or sentence was  
10 invalid. The practical importance of this rule is that a plaintiff cannot attack his conviction *in* a civil  
11 rights action for damages or equitable relief; the decision must have been successfully attacked  
12 *before* the civil rights action is filed.

13 *Heck* bars Mr. Smith's claims for alleged constitutional violations in the criminal proceedings  
14 against him that led to his convictions for vehicle theft, burglary and robbery. His causes of action  
15 for damages will not accrue unless and until Mr. Smith's convictions are set aside. Mr. Smith has  
16 not alleged that any of the three convictions has been set aside, and all indications are that none of  
17 them have been set aside. His allegation that the 2002 vehicle theft conviction made him eligible for  
18 three strikes sentencing in the burglary case shows that the vehicle theft conviction was never set  
19 aside. His appeals from the 2007 burglary conviction and 2008 robbery conviction were  
20 unsuccessful. He remains in prison. There is no reason to grant Mr. Smith further leave to amend  
21 because further amendment would be futile due to the *Heck* rule..

22 Mr. Smith requested a further extension of the deadline for his amended complaint, apparently so  
23 he can draft additional claims regarding his criminal cases. A further extension of the deadline will  
24 not be granted because (a) Mr. Smith has already had more than four months to prepare his amended  
25 complaint and (b) additional challenges to his convictions also would be barred by the *Heck* rule.  
26 Mr. Smith's motion for an extension of the deadline to file an amended complaint is DENIED.  
27 (ECF No. 24.)  
28

1 If Mr. Smith wants to challenge a state court conviction in federal court and has not already done  
2 so, he must file a petition for writ of habeas corpus because a petition for writ of habeas corpus is the  
3 exclusive method by which he may challenge a state court conviction in this court. *Preiser v.*  
4 *Rodriguez*, 411 U.S. 475, 500 (1973). Mr. Smith should be aware of two important limits. Before a  
5 state court prisoner may file a federal habeas petition, he must exhaust state judicial remedies, either  
6 on direct appeal or through collateral proceedings, by presenting the highest state court available  
7 with a fair opportunity to rule on the merits of each and every issue he seeks to raise in federal court.  
8 See 28 U.S.C. § 2254(b)(1)(A),(c); *Duckworth v. Serrano*, 454 U.S. 1, 3 (1981). A federal habeas  
9 petition must be filed before the expiration of the one-year statute of limitations deadline in 28  
10 U.S.C. § 2244(d).

11 If Mr. Smith ever has any of his convictions set aside, he then may file a new civil rights action  
12 in which he can assert claims for violations of his constitutional rights with regard to the conviction  
13 that has been set aside.

#### 14 CONCLUSION

15 For the foregoing reasons, this action is dismissed. The amended complaint as amended fails to  
16 state a claim upon which relief may be granted, and further leave to amend will not be granted  
17 because it would be futile. This dismissal is without prejudice to Mr. Smith filing a civil rights  
18 action for damages if his criminal convictions are ever set aside and without prejudice to Mr. Smith  
19 filing a federal habeas petition to challenge each of his convictions. The clerk shall close the file.

20 Mr. Smith's motion for a further extension of time to amend is DENIED. (ECF No. 24.)

21 **IT IS SO ORDERED.**

22 Dated: September 4, 2015

23   
24 LAUREL BEELER  
25 United States Magistrate Judge  
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